IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO : 21287 of 2004

Between:

P. Hanmanthu, S/o. P. Sathyanarayana,
Aged about 38 years,

Occu: Driver E-290134,

R/o. 1-7-41, Brahmin Street, Medak - 502 110

..... PETITIONER

AND

1. The APSRTC, Rep. by its Regional Manager,

Medak Region, Sangareddy.
2. APSRTC, Rep. by Depot Manager,
   Bus Depot Sangareddy, Medak District.
3. Labour Court-II, Chandralok Complex, Hyderabad,
   Rep. by the Presiding Officer.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate direction, order or Writ one in the nature of writ of certiorari by calling the entire records in respects of impugned orders passed in ID.No. 147/2001 published in G.O.Rt.No.725, dated 27-4-2004 of 3rd respondent herein and declare the impugned orders and actions of 1 and 2nd respondents in Proceedings

No.P1/1(50)/95-DM, SRD dated 16-6-1995 of 2nd respondent removing the petitioner from service and in Proc.No.PA/675(37)/95-RM-SRD, dated 30-1-1996 insofar as they relate to confirmation of orders of 2nd respondent as perverse, unjust, arbitrary, without jurisdiction and against the principles of natural justice and voilative of Articles 14, 21 of the Constitution of India and consequently direct the 1st and 2nd respondents to treat the petitioner as reinstated into service with continuity of service along with back wages with all consequential benefits

Counsel for the Petitioner: MR.M.M.ALI

Counsel for Respondent Nos.1 and 2: MR.V.T.M.PRASAD, STANDING COUNSEL FOR APSRTC

Counsel for Respondent No.3: GP FOR LABOUR

The Court, at the stage of admission, made the following:

ORDER:

This writ petition is filed seeking a certiorari to call for the entire records in respect of impugned orders passed in ID.No.147/2001 published in G.O.Rt.No.725, dated
27-04-2004 of the third respondent herein and declare the impugned orders and action of first and second respondents in Proceedings No.P1/1(50)/95-DM, SRD, dated 16-06-1995 of 2nd respondent removing the petitioner from service and in Proc.No.PA/675(37)/95-RM-SRD, dated 30-01-1996, insofar as they relate to confirmation of orders of 2nd respondent as unjust, arbitrary, without jurisdiction and against the principles of natural justice and consequently direct the 1st and 2nd respondents to treat the petitioner as reinstated into service with continuity of service with back wages and all consequential benefits.

The case of the petitioner, in brief, is that while he was working as a driver in the second respondent-depot, he was issued with a charge sheet dated 15-05-1995 for his unauthorized absence, to which an explanation dated 24-05-1995 was submitted by him. The second respondent not satisfied with his explanation, ordered enquiry in which the charges levelled against the petitioner were proved. Based on the enquiry report, the second respondent issued a show-cause notice dated 02-06-1995 proposing to remove the petitioner from service, to which an explanation dated 15-06-1995 was submitted by him. Further, not being satisfied with the explanation, the second respondent issued

an order dated 16-06-1995, removing the petitioner from service. The petitioner unsuccessfully preferred an appeal before the appellate authority. In revision, the first respondent, by order dated 30-01-1996, while agreeing with the findings of the enquiry officer and the proceedings of the second respondent-depot manager, however, ordered for reinstatement of the petitioner into service as Driver-III afresh without continuity of service and back wages on compassionate grounds, by taking a lenient view.

Aggrieved by the orders of the first and second respondents, the petitioner preferred I.D.No.147 of 2001, under Section 2-A(2) of the Industrial Disputes Act (for short 'the Act') before the Labour Court-II, Hyderabad. The Labour Court, by the impugned proceedings dated
27-04-2004, dismissed the I.D.No.147 of 2001 on the ground that inasmuch as there was no order of dismissal, retrenchment, discharge or termination, the I.D. proceedings under Section 2-A (2) of the Act were not maintainable. Further, aggrieved by the same, the petitioner has filed the present writ petition.

Heard the learned counsel for the petitioner and the learned standing counsel for the respondent-Corporation.

The short point that arises for consideration in this writ petition is whether the petitioner can be treated as dismissed, discharged, retrenched or terminated workman within the meaning of Section 2-A (2) of the Act so as to maintain the I.D. before the Tribunal.

The learned counsel for the petitioner contends that inasmuch as the order of removal still remains in force and that order has not been modified or set aside either wholly or partly by the revisional authority, Section 2-A(2) of the Act attracts and the Tribunal has to enquire into the dispute in accordance with law.

On the other hand, the learned standing counsel appearing for the respondent-Corporation contends that inasmuch as the petitioner was ordered to be reinstated into service as Driver-III afresh and has also joined duty accordingly, he is not a dismissed, discharged, retrenched or terminated workman, within the meaning of
2-A(2) of the Act and hence the Tribunal has rightly dismissed the I.D.

Section 2-A(2) of the Act reads as follows:

> "Notwithstanding anything in Section 10, any such workman as is specified in sub-section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein; and on receipt of such application the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and accordingly all the provisions of this Act, shall apply in relation to such dispute as they apply in relation to any other industrial dispute."

A plain reading of the above provision makes it clear that it applies only to the dismissal, discharges, retrenches or termination of a workman.

From a perusal of the impugned order passed by the first respondent-regional manager, it is evident that he has not disturbed the findings arrived at by the enquiry officer and a consequent punishment imposed by the second respondent-depot manager. However, he only ordered for appointment of the petitioner as Driver-III afresh solely on compassionate grounds taking a lenient view and having regard to the fact that there were no major punishments imposed on the petitioner on any of the earlier occasions.

In effect, the conclusions reached by the enquiry officer and the order of removal from service remained untouched. In fact, the first respondent passed the impugned order while agreeing with the findings of the enquiry officer and the consequent order passed by the second respondent. Under these circumstances, the order passed by the third respondent-Tribunal, dismissing the I.D as not maintainable, cannot be sustained inasmuch as the order of dismissal passed by the disciplinary authority was not modified or set aside either wholly or partly and the said order of removal is still in force, the petitioner can raise a dispute against that order under Section 2-A(2) of the Act. Inasmuch as the relief granted to the petitioner was solely on compassionate grounds by taking a lenient view and the termination order passed by the disciplinary authority was, in fact, confirmed by the revisional authority. The reasoning adopted by the Tribunal in dismissing the I.D, without adverting to this aspect of the matter is unsustainable.

In the circumstances, the impugned award is set aside and the writ petition is accordingly allowed, remanding the matter to the Labour Court-II, Hyderabad

for fresh consideration on merits after giving notice and opportunity of hearing to both the parties and dispose of the same in accordance with law, as expeditiously as possible. There shall be no order as to costs.

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04-03-2005.

Lrkm.

To

1. The Regional Manager, APSRTC,

Medak Region, Sangareddy.
2. The Depot Manager, APSRTC,
   Bus Depot Sangareddy, Medak District.
3. The Presiding Officer,

Labour Court-II,

Chandralok Complex, Hyderabad,
4. 2 CCs to the Government Pleader for Labour, High Court

Buildings, High Court of A.P., Hyderabad (O.U.T).

5. 2 CD copies.

6. 1 CC to MR.NARASIMHA GOUD.

*Form-NIC-OGS/WP{**SPJS**}*